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Christopher H. Smith (R - New Jersey), Chairman
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The UN Commission on Human Rights: Protector or Accomplice?

Mr. Chairman, it is a pleasure to be with you today. I welcome the opportunity to present the Administration's views on reform of the UN's key human rights bodies and discuss with you ways to bolster the UN's effectiveness in carrying out the UN Charter's solemn commitment to promote and protect human rights and fundamental freedoms. As President Bush reminds us, human rights and democracy are not the privilege of selected nations; they are the birthright of every person. We need a UN that is equipped to advance these values, not just rhetorically but through good works on the ground. We are foursquare behind recent efforts to launch a serious process of UN reform, and we recognize, as Secretary Rice recently said, "there's an opportunity now...to make the kinds of changes and reforms that are necessary to update" the UN.

Mr. Chairman, the UN's human rights mechanisms are broken and must be fixed. UN Secretary-General Kofi Annan himself has said, "Unless we remake our human rights machinery, we may be unable to renew public confidence in the United Nations itself." We agree with him fully when he said at the Commission on Human Rights 12 days ago, "We have reached a point at which the Commission's declining credibility has cast a shadow on the reputation of the United Nations system." Moreover, he was right in saying "the Office [of the High Commissioner for Human Rights] is "ill-equipped... to meet the growing challenges that confront us."

Commission on Human Rights (CHR)

Mr. Chairman, as you know, some of the most egregious violators of human rights work through their regional blocs to gain nomination and election to the Commission in order to protect themselves and their ilk from criticism. At the same time, there has been a disturbing trend, against which we have fought, for developing countries to turn away from country-specific resolutions that single out and place under international scrutiny those countries with the worst human rights records. Even more pernicious, some countries argue for the elimination of all country-specific resolutions, except those targeted at Israel under Item 8, the only agenda item devoted exclusively to one country. We are increasingly confronted with bloc voting – whether by the Africa

Group, the G-77, or the Non-aligned Movement – that is shifting the CHR’s focus away from bedrock civil and political rights, and toward economic, social, and cultural rights.

We all recall when Libya, through the customary regional rotation scheme, became Chair of the Commission. The United States broke a taboo by merely calling a vote on that selection. At present, the following countries are currently serving on the 53-member Commission: Cuba, Sudan, China, and Zimbabwe – not exactly exemplars of human rights treatment of their own citizens. I suspect it is this glaring inconsistency between the Commission’s calling and its membership that largely inspired the title of our session today (UNCHR: Protector or Accomplice?)

Use of the no-action motion -- which takes a resolution off the table, stifling its consideration -- has proliferated, both at the Commission and the Third Committee of the General Assembly, where human rights resolutions are also considered. While this year only one no-action motion was introduced (and it failed), three such motions in the Third Committee in the Fall session of the General Assembly blocked resolutions of Belarus, Zimbabwe, and Sudan.

I should point out that despite these negative trends and attitudes in the Commission, the United States, working with other nations in Geneva has had considerable success at this year’s session of the Commission on Human Rights, which is finishing its six-week session this week. The number of unbalanced and unfair resolutions aimed at Israel was one fewer than last year. Moreover, we were successful in passing country-specific resolutions on Burma, North Korea, Cuba, and Belarus – no mean feat, especially on the latter two, if I may say so. On Sudan, we are working with the European Union to have the strongest possible resolution on the deplorable human rights situation in Darfur.

To address the Commission’s myriad problems – what Secretary-General Annan has called “a declining credibility and professionalism” -- the Secretary-General proposes in his report, “In Larger Freedom: Towards Development, Security and Human Rights for All,” to replace it with a smaller Human Rights Council. The Council would be a standing body, able to meet when necessary, rather than for only six weeks each year, as with the Commission. Its members would be elected by a two-thirds majority of the General Assembly and should have a solid human rights record. The Council would be mandated to review the human rights of every UN Member State periodically, but would be available to convene on short notice to deal with urgent crises or massive and gross violations of human rights. The Council would also be equipped to give technical assistance and policy advice on the promotion of human rights.

We support the Secretary-General’s recommendations. We had earlier disagreed with the High-Level Panel, a group of experts assembled by the Secretary-General to look at institutional arrangements to confront current threats, when it called for “universalizing” the membership of the Commission to include all UN Member States. We also strongly agree with the Secretary-General that elected members should have a

positive human rights record and should undertake to abide by the highest human rights standards.

We look forward to engaging with UN and other Member State officials to work out the details of the Council, including its precise size, composition, mandate, relationship to other UN bodies, whether and how to retain use of so-called “special mechanisms,” such as Special Rapporteurs or Independent Experts, and whether and how to continue active involvement of non-governmental organizations (NGOs) in the work of the Council. We also want to be sure that election to the Council by the General Assembly truly leads to a responsible set of Council members, and does not lead us back to a situation where some of the worst abusers are sitting in judgment of others.

The devil, of course, is in the details. If regional blocs can still pick slates of candidates for a fixed allotment of slots, a two-thirds vote may not effect any change. We could, instead, see more of what we witnessed a year ago: the African Group returning Sudan to the Commission’s membership in an election where the United States walked out in protest – unable to block the outcome. In addition, we want the shift to a Council to move us away from the regional-bloc voting that so often hamstrings the work of the current Commission. Our efforts to work with other democracies to create and sustain a “democracy caucus” within UN bodies are similarly motivated. Beyond institutional fixes, in the Commission or a Council, democracies must seize the initiative to save the UN human rights apparatus from utter disrepute.

Office of the High Commissioner for Human Rights

Mr. Chairman, the UN Secretary-General has also made important proposals for strengthening the Office of the High Commissioner for Human Rights. As Mr. Annan rightly points out, the role of the Office has expanded in recent years and is now engaged in conflict prevention, crisis response, and wide-ranging technical assistance, in addition to its longstanding advocacy work. Yet, the Office receives a scant two percent of the UN’s regular budget to carry out its programs, and must rely on voluntary contributions.

Mr. Chairman, the United States strongly supports increasing the capacity and effectiveness of the Office of the High Commissioner for Human Rights. We welcome the Secretary-General’s call upon the UN membership to strengthen the Office of the High Commissioner, as well as similar proposals of the High-Level Panel to boost the role and capacity of the High Commissioner’s office in the work of the UN. We look forward to reviewing the High Commissioner’s plan of action, pursuant to the request of the Secretary-General. The UN membership must put increased support for and provision of greater capacity of the Office of the High Commissioner among its highest priorities.

The United States has in recent months pushed hard for such increased capacity. In 2004, the United States, with Romania, Peru, and Timor-Leste, first introduced a resolution giving the Office of the High Commissioner a coordinating role in promoting rule of law and democracy among UN agencies and programs, and provided funding to

create a new position in the Office to serve as a UN-system Focal Point for democracy-building.

This Focal Point idea, by the way, inspired the UN Democracy Fund proposed by President Bush at the UN General Assembly. The proposal for the Fund has been embraced by the Secretary-General in his Report. Now that we have completed our negotiations with the Secretariat, the UN is currently discussing the Terms of Reference for such a Fund with Member States and intends to establish the Fund soon. Meanwhile, we are discussing the development of the Fund informally, but actively, with several potential key donors. We are hopeful that the Fund will open soon for contributions, so that its planned Board of donors and democracies can fund NGOs and other entities to assist in transitions to and consolidation of democracy. I submit that the Democracy Fund could prove even more important than a new Human Rights Council or the High Commissioner's Office in enlarging freedom's reach.

The potential role of the Office of the High Commissioner in monitoring and preventing human rights abuses on the ground – and in carrying out proper early warning – is no less important than technical assistance. The United States has urged through diplomacy and Security Council resolutions that the presence in Darfur of monitors from the High Commissioner's Office be expanded. The UN bureaucracy – including in New York – has taken an excruciatingly long time to get monitors into the field to complement the African Union's crucial troop deployment in Darfur.

Another important area in which the High Commissioner could use additional resources is in the area of training, standardization, and professionalization of the so-called "special rapporteurs" – the UN term of art for private experts asked to research or monitor a situation and report back to the Commission or Commissioner. These measures would permit more effective and professional support for the special rapporteurs and provide more consistency and objectivity in their reports.

Mr. Chairman, let me be clear. We continue to place a high value on resolutions. In particular, for some acute cases of repressive regimes that refuse to work with the international community, we believe it is important to retain country-specific resolutions as a last resort. However, the ability of the Office of the High Commissioner to offer advisory services, technical assistance, training, human rights and rule of law components of post-conflict reconciliation, and monitoring of grave human rights threats are at the heart of what the UN should be doing.

It is time to move beyond mere standard-setting on paper to the on-the-ground work of improving human rights. The Secretary-General was right to have said, "The cause of human rights has entered a new era. For much of the past 60 years, our focus has been on articulating, codifying and enshrining rights. That effort produced a remarkable framework of laws, standards and mechanisms – the Universal Declaration, the international covenants, and much else. Such work needs to continue in some areas. But the era of declaration is now giving way, as it should, to an era of implementation." The High Commissioner's office has a crucial role to play in this effort.

Impact of the Economic and Social Council (ECOSOC) on CHR

Mr. Chairman, let me turn to a third and final UN body in need of reform - ECOSOC. The UN Charter gives the Economic and Social Council (ECOSOC) broad responsibility for oversight of the UN system's activities in the economic and social, including humanitarian, domains. The Commission on Human Rights is among ECOSOC's 26 subsidiary bodies. If the Secretary-General's proposed reform of the Commission is implemented, the new Human Rights Council would report directly to the General Assembly or could stand as an independent Charter body like the Security Council. No longer would the human rights body report to ECOSOC.

Most UN member states acknowledge that ECOSOC is not fulfilling its chartered responsibilities effectively. It is our view that ECOSOC's limitations are inherent in its structure. ECOSOC has 54 elected members and is open to participation by all UN Member States as observers. ECOSOC's dilemma is that it is too large and unwieldy for concerted action and too small to represent the full membership of the UN. As such, it tends to add little value as an intermediary between its subsidiary bodies and the General Assembly, to which ECOSOC reports.

In conclusion, Mr. Chairman, let me thank you again for this opportunity to engage on such an important topic as UN reform in the human rights area, and to commend you for your interest. This Administration, and I personally, am passionate about the quest to achieve far greater credibility and effectiveness in the UN's implementation of its mandate to promote and protect human rights and fundamental freedoms. I welcome your comments and questions.